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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

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8 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 FRANCISCO JAVIER MARES, aka
13 "Pancho",

14 Defendant.

No. 2:20-cr-00018-JCM-EJY

**Plea Agreement for Defendant
Francisco Mares Pursuant to Fed. R. Crim. P.
11(c)(1)(A) and (B)**

16 This plea agreement between Francisco Mares ("defendant") and the United States
17 Attorney's Office for the District of Nevada (the "USAO") sets forth the parties' agreement
18 regarding the criminal charges referenced herein and the applicable sentences, and fines, in the
19 above-captioned case. This agreement binds only defendant and the USAO and does not bind
20 the district court, the U.S. Probation Office, or any other federal, state, local, or foreign
21 prosecuting, enforcement, administrative, or regulatory authorities. This agreement does not
22 prohibit the USAO or any agency or third party from seeking any other civil or administrative
23 remedies, including civil forfeiture *in rem*, directly or indirectly against defendant or defendant's
24 property.

1 This agreement becomes effective upon signature by defendant, defendant's counsel, and
2 an Assistant United States Attorney.

3 **I. DEFENDANT'S OBLIGATIONS**

- 4 1. Defendant agrees to:
- 5 a. At the earliest opportunity requested by the USAO and provided by the
6 district court, appear and plead guilty to Count One of the indictment in this case, which charges
7 defendant with Conspiracy to Distribute a Controlled Substance in violation of 21 U.S.C. §§ 846
8 and 841(a)(1), (b)(1)(A)(viii);
- 9 b. Stipulate to the facts agreed to in this agreement;
- 10 c. Abide by all agreements regarding sentencing contained in this agreement;
- 11 d. Not seek to withdraw defendant's guilty plea once it is entered;
- 12 e. Appear for all court appearances, surrender as ordered for service of
13 sentence, obey all conditions of any bond, and obey any other ongoing court order in this matter;
- 14 f. Not commit any federal, state, or local crime;
- 15 g. Be truthful at all times with the U.S. Probation and Pretrial Services Offices
16 and the Court;

17 **II. THE USAO'S OBLIGATIONS**

- 18 2. The USAO agrees to:
- 19 a. Stipulate to facts agreed to in this agreement;
- 20 b. Abide by all agreements regarding sentencing contained in this agreement;
- 21 c. At sentencing, provided that defendant demonstrates an acceptance of
22 responsibility for the offense up to and including the time of sentencing, recommend a two-level
23 reduction in the applicable sentencing guidelines offense level, pursuant to USSG § 3E1.1, and
24 move for an additional one-level reduction if available under that section;

1 18 U.S.C. § 3553(f) and USSG § 5C1.2, a violation of 21 U.S.C. §§ 846, 841(a)(1) and
2 (b)(1)(A)(viii) carries a statutory minimum sentence of 10 years imprisonment.

3 5. Defendant understands that under 21 U.S.C. § 862a, defendant will not be eligible
4 for assistance under state programs funded under the Social Security Act or Federal Food Stamp
5 Act or for federal food stamp program benefits, and that any such benefits or assistance received
6 by defendant's family members will be reduced to reflect defendant's ineligibility.

7 6. Parole Abolished: Defendant acknowledges that defendant's prison sentence
8 cannot be shortened by early release on parole because parole has been abolished.

9 7. Supervised Release: Defendant understands that supervised release is a period of
10 time following imprisonment during which defendant will be subject to various restrictions and
11 requirements. Defendant understands that if defendant violates one or more of the conditions of
12 any supervised release imposed, defendant may be returned to prison for all or part of the term of
13 supervised release authorized by statute for the offense that resulted in the term of supervised
14 release.

15 8. Factors under 18 U.S.C. § 3553: Defendant understands that the district court
16 must consider the factors set forth in 18 U.S.C. § 3553(a) in determining defendant's sentence.
17 However, the statutory maximum sentence and any statutory minimum sentence limit the
18 district court's discretion in determining defendant's sentence.

19 9. Potential Collateral Consequences of Conviction: Defendant understands that, by
20 pleading guilty, defendant may be giving up valuable government benefits and valuable civic
21 rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the
22 right to serve on a jury. Defendant understands that once the district court accepts defendant's
23 guilty plea, it will be a federal felony for defendant to possess a firearm or ammunition.
24 Defendant understands that the conviction in this case may also subject defendant to various

1 other collateral consequences, including but not limited to revocation of probation, parole, or
2 supervised release in another case and suspension or revocation of a professional license.
3 Defendant understands that unanticipated collateral consequences will not serve as grounds to
4 withdraw defendant's guilty plea.

5 10. Potential Removal/Deportation Consequences of Conviction: Defendant
6 understands that, if defendant is not a United States citizen, the felony conviction in this case
7 may subject defendant to removal, also known as deportation, which may, under some
8 circumstances, be mandatory; denial of citizenship; and denial of admission to the United States
9 in the future. The district court cannot advise defendant fully regarding the immigration
10 consequences of the felony conviction in this case, but defendant's attorney has advised him
11 about the deportation risks of his guilty plea. Defendant understands that unexpected
12 immigration consequences will not serve as grounds to withdraw defendant's guilty plea.

13 V. FACTUAL BASIS

14 11. Defendant admits that defendant is, in fact, guilty of the offense to which
15 defendant is agreeing to plead guilty. Defendant acknowledges that if defendant elected to go to
16 trial instead of pleading guilty, the USAO could prove defendant's guilt beyond a reasonable
17 doubt. Defendant further acknowledges that defendant's admissions and declarations of fact set
18 forth below satisfy every element of the charged offense. Defendant waives any potential future
19 claim that the facts defendant admitted below are insufficient to satisfy the elements of the
20 charged offense. Defendant admits and declares under penalty of perjury that the facts set forth
21 below are true and correct:

22 Beginning from a time unknown, and continuing to on or about October 30, 2019,
23 Defendant FRANCISCO MARES and others known and unknown to the United States
24 Attorney's Office conspired to distribute a mixture and substance containing a detectable

1 amount of methamphetamine in Las Vegas, Nevada. On October 23, 2019, and October 29,
2 2019, MARES sold 500 grams or more of mixture and substance containing a detectable amount
3 of methamphetamine to a DEA confidential source. The mixture and substance was later sent to
4 the DEA lab for analysis and found to contain 2,122 grams of actual methamphetamine. The
5 parties agree and stipulate that 2,122 grams of actual methamphetamine is reasonably
6 foreseeable to the defendant. Furthermore, all of the foregoing occurred in the State and Federal
7 District of Nevada.

8 VI. SENTENCING FACTORS

9 12. Discretionary Nature of Sentencing Guidelines: Defendant understands that in
10 determining defendant's sentence, the district court is required to calculate the applicable
11 sentencing guidelines range and to consider that range, possible departures under the sentencing
12 guidelines, and the other sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant
13 understands that the sentencing guidelines are advisory only, that defendant cannot have any
14 expectation of receiving a sentence within the calculated sentencing guidelines range, and that
15 after considering the sentencing guidelines and the other § 3553(a) factors, the district court will
16 be free to exercise its discretion to impose any sentence it finds appropriate between the
17 mandatory minimum and up to the maximum set by statute for the crime of conviction.

18 13. Offense Level Calculations: The parties jointly agree and stipulate that, in
19 calculating Defendant's advisory guidelines sentencing range, the Court should use the following
20 base offense level and adjustments; acknowledge that these stipulations do not bind the district
21 court; and agree that they will not seek to apply or advocate for the use of any other base offense
22 level or any other specific offense characteristics, enhancements, or reductions in calculating the
23 advisory guidelines range:

24 / / /

Base Offense Level [USSG § 2D1.1(c)(2)]:	36
<u>[Offense Characteristics] [USSG § 2D1.1(b)(18)]:</u>	<u>-2</u>
Adjusted Offense Level:	34

14. Agreement with Respect to Some Safety Valve Requirements: Defendant and the USAO agree that:

a. Defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon or induce another participant to do so in connection with the offenses charged in count 1 -3 of the indictment;

b. The offenses charged in counts 1- 3 of the indictment did not result in death or serious bodily injury to any person; and

c. Defendant was not an organizer, leader, manager, or supervisor of others in the offenses charged in counts 1-3 of the indictment and was not engaged in a continuing criminal enterprise.

d. Defendant and the USAO have made no agreement whether defendant qualifies for safety-valve relief from the statutory minimum sentence, and Defendant agrees that, if the district court determines he does not qualify, that determination will not serve as grounds to withdraw defendant's guilty plea. If defendant is found to be ineligible for the benefits of the "safety valve" provisions of USSG §§ 2D1.1(a) (18) and 5C1.2, the defendant will not receive the additional two-point reduction, and must be sentenced to the mandatory minimum term of imprisonment.

15. Reduction for Acceptance of Responsibility: Under USSG § 3E1.1(a), the USAO will recommend that defendant receive a two-level downward adjustment for acceptance of responsibility unless defendant (a) fails to truthfully admit facts establishing a factual basis for the guilty plea when defendant enters the plea; (b) fails to truthfully admit facts establishing the

1 amount of restitution owed when defendant enters the guilty plea; (c) fails to truthfully admit
2 facts establishing the forfeiture allegations when defendant enters the guilty plea; (d) provides
3 false or misleading information to the USAO, the Court, Pretrial Services, or the Probation
4 Office; (e) denies involvement in the offense or provides conflicting statements regarding
5 defendant's involvement or falsely denies or frivolously contests conduct relevant to the offense;
6 (f) attempts to withdraw defendant's guilty plea; (g) commits or attempts to commit any crime;
7 (h) fails to appear in court; or (i) violates the conditions of pretrial release.

8 Under USSG § 3E1.1(b), if the district court determines that defendant's total offense
9 level before operation of § 3E1.1(a) is 16 or higher, and if the USAO recommends a two-level
10 downward adjustment pursuant to the preceding paragraph, the USAO will move for an
11 additional one-level downward adjustment for acceptance of responsibility before sentencing
12 because defendant communicated defendant's decision to plead guilty in a timely manner that
13 enabled the USAO to avoid preparing for trial and to efficiently allocate its resources.

14 16. Criminal History Category. Defendant acknowledges that the district court may
15 base defendant's sentence in part on defendant's criminal record or criminal history. The district
16 court will determine defendant's criminal history category under the sentencing guidelines.

17 17. Additional Sentencing Information: The stipulated sentencing guidelines
18 calculations are based on information now known to the parties. Defendant understands that
19 both defendant and the USAO are free to (a) supplement the facts in this agreement by supplying
20 relevant information to the U.S. Probation and Pretrial Services Offices and the district court
21 regarding the nature, scope, and extent of defendant's criminal conduct and any aggravating or
22 mitigating facts or circumstances; and (b) correct any and all factual misstatements relating to the
23 district court's sentencing guidelines calculations and determination of sentence. While this
24 paragraph permits both the USAO and defendant to submit full and complete factual

1 information to the U.S. Probation and Pretrial Services Offices and the district court, even if that
2 factual information may be viewed as inconsistent with the facts agreed to in this agreement, this
3 paragraph does not affect defendant's and the USAO's obligations not to contest the facts agreed
4 to in this agreement. Good faith efforts to provide truthful information or to correct factual
5 misstatements shall not be grounds for defendant to withdraw defendant's guilty plea.

6 Defendant acknowledges that the U.S. Probation Office may calculate the sentencing
7 guidelines differently and may rely on additional information it obtains through its investigation.
8 Defendant also acknowledges that the district court may rely on this and other additional
9 information as it calculates the sentencing guidelines range and makes other sentencing
10 determinations, and the district court's reliance on such information shall not be grounds for
11 defendant to withdraw defendant's guilty plea.

12 VII. POSITIONS REGARDING SENTENCING

13 18. The USAO will recommend that the district court sentence defendant within the
14 advisory guideline range as determined by the district court. Defendant may argue for a
15 downward variance pursuant to 18 U.S.C. § 3553.

16 19. Defendant acknowledges that the district court does not have to follow the
17 recommendation of either party.

18 20. Notwithstanding its agreement to recommend a sentence as described above, the
19 USAO reserves its right to defend any lawfully imposed sentence on appeal or in any post-
20 conviction litigation.

21 21. If defendant commits any act that results in the Court finding that defendant is
22 not entitled to a downward adjustment for acceptance of responsibility, the USAO is entitled to
23 argue for any sentence it deems appropriate under 18 U.S.C. § 3553(a). In any such event,
24

1 Defendant remains bound by the provisions of this agreement and shall not have the right to
2 withdraw defendant's guilty plea.

3 **VIII. WAIVER OF CONSTITUTIONAL RIGHTS**

4 22. Defendant understands that by pleading guilty, defendant gives up the following
5 rights:

- 6 a. The right to persist in a plea of not guilty;
- 7 b. The right to a speedy and public trial by jury;
- 8 c. The right to be represented by counsel—and if necessary have the court
9 appoint counsel—at trial. Defendant understands, however, that, defendant retains the right to
10 be represented by counsel—and if necessary have the court appoint counsel—at every other stage
11 of the proceeding;
- 12 d. The right to be presumed innocent and to have the burden of proof placed
13 on the USAO to prove defendant guilty beyond a reasonable doubt;
- 14 e. The right to confront and cross-examine witnesses against defendant;
- 15 f. The right to testify and to present evidence in opposition to the charges,
16 including the right to compel the attendance of witnesses to testify;
- 17 g. The right not to be compelled to testify, and, if defendant chose not to
18 testify or present evidence, to have that choice not be used against defendant; and
- 19 h. The right to pursue any affirmative defenses, Fourth Amendment or Fifth
20 Amendment claims, and any other pretrial motions that have been filed or could be filed.

21 **IX. WAIVER OF APPELLATE RIGHTS**

22 23. Waiver of Appellate Rights. Defendant knowingly and expressly waives: (a) the
23 right to appeal any sentence imposed within or below the applicable Sentencing Guideline range
24 as determined by the district court; (b) the right to appeal the manner in which the district court

1 determined that sentence on the grounds set forth in 18 U.S.C. § 3742; and (c) the right to appeal
2 any other aspect of the conviction, including but not limited to the constitutionality of the
3 statutes of conviction; any other aspect of the sentence; and any order of restitution or forfeiture.

4 24. Defendant reserves only the right to appeal any portion of the sentence that is an
5 upward departure or variance from the applicable Sentencing Guideline range as determined by
6 the district court.

7 25. Waiver of Post-Conviction Rights. Defendant also knowingly and expressly
8 waives all collateral challenges, including any claims under 28 U.S.C. § 2255, to defendant's
9 conviction, sentence, and the procedure by which the district court adjudicated guilt and
10 imposed sentence, except non-waivable claims of ineffective assistance of counsel.

11 26. Preservation of Evidence: Defendant acknowledges that the USAO and the
12 agencies investigating this case are not obligated or required to preserve any evidence obtained in
13 the investigation of this case.

14
15 **X. RESULT OF WITHDRAWAL OF GUILTY PLEA
OR VACATUR/REVERSAL/SET-ASIDE OF CONVICTION**

16 27. Consequence of withdrawal of guilty plea: Defendant agrees that if, after entering
17 a guilty plea pursuant to this agreement, defendant seeks to withdraw and succeeds in
18 withdrawing defendant's guilty plea on any basis other than a claim and finding that entry into
19 this agreement was involuntary, then (a) the USAO will be relieved of all of its obligations under
20 this agreement and (b) should the USAO choose to pursue any charge that was either dismissed
21 or not filed as a result of this agreement, then (i) any applicable statute of limitations will be
22 tolled between the date of defendant's signing of this agreement and the filing commencing any
23 such action; and (ii) defendant waives and gives up all defenses based on the statute of
24 limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such

1 action, except to the extent that such defenses existed as of the date of defendant's signing this
2 agreement.

3 28. Consequence of vacatur, reversal, or set-aside: Defendant agrees that if
4 defendant's conviction is vacated, reversed, or set aside, both the USAO and defendant will be
5 released from all their obligations under this agreement, except that, should the USAO choose to
6 pursue any charge that was either dismissed or not filed as a result of this agreement, then (i) any
7 applicable statute of limitations will be tolled between the date of defendant's signing of this
8 agreement and the filing commencing any such action; and (ii) defendant waives and gives up all
9 defenses based on the statute of limitations, any claim of pre-indictment delay, or any speedy
10 trial claim with respect to any such action, except to the extent that such defenses existed as of
11 the date of defendant's signing this agreement.

12 XII. BREACH OF AGREEMENT

13 29. Defendant agrees that if, at any time after this agreement becomes effective,
14 defendant knowingly violates or fails to perform any of defendant's obligations under this
15 agreement ("a breach"), the USAO may declare this agreement breached. All of defendant's
16 obligations are material, a single breach of this agreement is sufficient for the USAO to declare a
17 breach, and defendant shall not be deemed to have cured a breach without the express agreement
18 of the USAO in writing. If the USAO declares this agreement breached, and the district court
19 finds such a breach to have occurred, then: (a) if defendant has previously entered a guilty plea
20 pursuant to this agreement, defendant will remain bound by the provisions of this agreement and
21 will not be able to withdraw the guilty plea, and (b) the USAO will be relieved of all its
22 obligations under this agreement.

1 30. Following the Court's finding of a knowing breach of this agreement by defendant,
2 should the USAO choose to pursue any charge that was either dismissed or not filed as a result
3 of this agreement, then:

4 a. Defendant agrees that any applicable statute of limitations is tolled between
5 the date of defendant's signing of this agreement and the filing commencing any such action.

6 b. Defendant waives and gives up all defenses based on the statute of
7 limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such
8 action, except to the extent that such defenses existed as of the date of defendant's signing this
9 agreement.

10 c. Defendant agrees that: (i) any statements made by defendant, under oath,
11 at the guilty plea hearing (if such a hearing occurred prior to the breach); (ii) the agreed to factual
12 basis statement in this agreement; and (iii) any evidence derived from such statements, shall be
13 admissible against defendant in any such action against defendant, and defendant waives and
14 gives up any claim under the United States Constitution, any statute, Federal Rule of Evidence
15 410, Federal Rule of Criminal Procedure 11(f), or any other federal rule, that the statements or
16 any evidence derived from the statements should be suppressed or are inadmissible.

17
18 **XIII. COURT AND UNITED STATES PROBATION
AND PRETRIAL SERVICES OFFICE NOT PARTIES.**

19 31. Defendant understands that the Court and the U.S. Probation and Pretrial
20 Services Office are not parties to this agreement and need not accept any of the USAO's
21 sentencing recommendations or the parties' agreements to facts or sentencing factors.

22 32. Defendant understands that both defendant and the USAO are free to argue on
23 appeal and collateral review that the district court's sentencing guidelines calculations and the
24 sentence it chooses to impose are not error.

1 33. Defendant understands that even if the district court ignores any sentencing
2 recommendation, finds facts or reaches conclusions different from those agreed to by the parties,
3 or imposes any sentence up to the maximum established by statute, defendant cannot, for that
4 reason, withdraw defendant's guilty plea, and defendant will remain bound to fulfill all
5 defendant's obligations under this agreement. Defendant understands that no one—not the
6 prosecutor, defendant's attorney, or the Court—can make a binding prediction or promise
7 regarding the sentence defendant will receive, except that it will be within the statutory
8 maximum.

9 XIV. ADDITIONAL ACKNOWLEDGMENTS

10 34. The Defendant acknowledges that:

11 a. Defendant read this agreement and defendant understands its terms and
12 conditions.

13 b. Defendant had adequate time to discuss this case, the evidence, and this
14 agreement with defendant's attorney.

15 c. Defendant carefully and thoroughly discussed all terms of this agreement
16 with defendant's attorney.

17 d. Defendant understands the terms of this agreement and voluntarily agrees
18 to those terms.

19 e. Defendant has discussed with defendant's attorney the following: the
20 evidence; defendant's rights; possible pretrial motions that might be filed; possible defenses that
21 might be asserted either prior to or at trial; the sentencing factors set forth in 18 U.S.C. 3553(a);
22 the relevant sentencing guidelines provisions; and consequences of entering into this agreement.

23 f. The representations contained in this agreement are true and correct,
24 including the factual basis for defendant's offense set forth in this agreement.

1 g. Defendant was not under the influence of any alcohol, drug, or medicine
2 that would impair defendant's ability to understand the agreement when defendant considered
3 signing this agreement and when defendant signed it.

4 35. Defendant understands that defendant alone decides whether to plead guilty or go
5 to trial, and acknowledges that defendant has decided to enter defendant's guilty plea knowing of
6 the charges brought against defendant, defendant's possible defenses, and the benefits and
7 possible detriments of proceeding to trial.

8 36. Defendant understands that no promises, understandings, or agreements other
9 than those set forth in this agreement have been made or implied by defendant, defendant's
10 attorney, or the USAO, and no additional promises, agreements, or conditions shall have any
11 force or effect unless set forth in writing and signed by all parties or confirmed on the record
12 before the district court.

13 37. Defendant acknowledges that defendant decided to plead guilty voluntarily and
14 that no one threatened, coerced, or forced defendant to enter into this agreement.

15 38. Defendant is satisfied with the representation of defendant's attorney, and
16 defendant is pleading guilty because defendant is guilty of the charges and chooses to take
17 advantage of the promises set forth in this agreement and for no other reason.

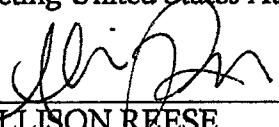
18 **XV. PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING**

19 39. The parties agree that this agreement will be considered part of the record of
20 defendant's guilty plea hearing as if the entire agreement had been read into the record of the
21 proceeding.

1 AGREED AND ACCEPTED


2 UNITED STATES ATTORNEY'S OFFICE
3 FOR THE DISTRICT OF NEVADA

4 CHRISTOPHER CHIOU
Acting United States Attorney

5 
6 ALLISON REESE
Assistant United States Attorney

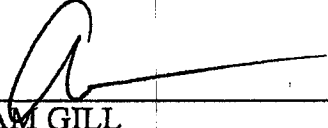
Date

4/27/21

7 
8 FRANCISCO JAVIER MARES
9 Defendant

Date

4/26/21

10 
11 ADAM GILL
12 Attorney for Defendant FRANCISCO MARES

Date

4/27/21